

U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NY (White Plains)

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JONATHAN KUHL

Plaintiff

v.

U.S. BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR LEGACY MORTGAGE
ASSET TRUST 2018GS-1, MTGLQ
INVESTORS, LP and RUSHMORE LOAN
MANAGEMENT SERVICES LLC

Defendants
-----X

: INDEX: 19-cv-8403

: NOTICE OF MOTION

PLEASE TAKE NOTICE that based on the affidavit of Jonathan Kuhl, sworn to on November 9, 2020, 2020, and all the papers and proceedings had to before, the plaintiff will move this court, at the courthouse, 300 Quarropas St., White Plains, N.Y. on November 25, 2020, or a soon thereafter as the parties of their counsel can be heard, for an Order pursuant to FRCP §§ 15 (b) (2) and 39 (b) amending the complaint in this action to include a jury trial, together with such other and further relief as the court deems just.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jon Kuhl".

Jonathan Kuhl, *pro se*

Dated: October 9, 2020

Pursuant to FRCP 15 (b) (2) such leave to amend shall be “freely given.”

FRCP 39 holds that when by error a jury trial has not been properly demanded, the court may order a jury trial on issues which might be so considered..

In *Tanvir v Laporte* (169 FRD 292, 2nd Circuit (1996)) the court held that “the Seventh Amendment right to a jury trial is fundamental [and] a court should indulge every reasonable presumption against a waiver. The right to a jury trial is too important, and the usual procedure for the waiver of the right too clearly set out by the federal rules for the courts to find a knowing and voluntary relinquishment of the right in a doubtful situation. Because a waiver should never be lightly inferred, the conduct said to constitute waiver must be clear and unequivocal.”

Here, I thought I had preserved that right by indicating it on the proper forms, and asked for the time to be set aside for a jury trial in the initial paperwork.


The defendants will not be prejudiced because this action is in its initial stages, and discovery has not even begun. The sole requested amendment to the complaint requested is the following sentence:

“Plaintiff demands a jury trial on all issues permitted by the Seventh Amendment.”

I swear under penalty of perjury pursuant to the U.S. Code that the preceding statements are true.

WHEREFORE, I ask that the court permit such amendment pursuant to FRCP 15 (b) (2), together with such other and further relief as the court deem just.

Respectfully,


Jonathan Kuhl, *pro se*

Dated: November 9, 2020

U.S. DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NY (White Plains)

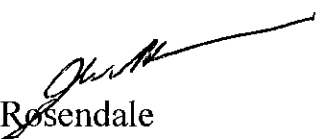
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JONATHAN KUHL	:
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Plaintiff	:
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v.	:
	:
U.S. BANK TRUST NATIONAL	:
ASSOCIATION , NOT IN ITS INDIVIDUAL	:
CAPACITY BUT SOLELY AS OWNER	:
TRUSTEE FOR LEGACY MORTGAGE	:
ASSET TRUST 2018GS-1, MTGLQ	:
INVESTORS, LP and RUSHMORE LOAN	:
MANAGEMENT SERVICES LLC	: Affidavit of Service
	:
Defendants	:
-----X	

DONALD ROSENDALE being sworn states as follows under penalty of perjury.

1. I am over 18 years of age, a citizen of the U.S. and I am not a party to this action.
2. I served the affixed Motion for Leave to Amend complaint on the defendants on November 9, 2020 by placing a copy in an envelope addressed to John Brigandi of Knuckles, Ranfro and Manfro, attorneys for U.S. Bank, at his office, 600 E. Crescent St., Upper Saddle River, N.J. 07577
3. Sealing that envelope and placing it in the custody of an employee of the U.S. Postal system.

4. The preceding statement has been made under penalty of perjury.

Respectfully,



Don Rosendale
4848 Route 44
Amenia, NY 12501
Dated: November 9, 2020



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10601
pro se clerk
US District Court
300 Quarropas St
White Plains, NY
10601

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